

bidding to an available license in St. Louis if it is outbid in its region. Where licenses are not interdependent and are expected to have low value, it would be most appropriate to use a sequential bidding methodology for ITFS auctions. Significantly, the Commission has retained sequential multiple round auctions among its menu of bidding methods even as it recently revised the competitive bidding rules.<sup>53/</sup> Since there is little or no elasticity of demand for ITFS licenses in different geographic areas, a sequential multiple round auction would be most appropriate if ITFS auctions are conducted.

The use of an open outcry approach has the benefit of being quick and relatively uncomplicated for ITFS entities that typically will have little experience with the Commission's more complex simultaneous multiround auction methods. Since there is no interdependence among ITFS licenses, it would be inefficient to require local schools and others to master those complex procedures merely to participate in the auction of the single ITFS license of interest to them. Moreover, by using a remote bidding system for the open outcry auction, the Commission can simplify participation by local schools and other educators, who will be saved the expense and inconvenience of sending an authorized representative to Washington to participate in some other format.

In the *Notice*, the Commission has sought comment on how it should resolve any "daisy-

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<sup>53/</sup> See 47 C.F.R. § 1.2103(a)(2) ("The Commission will choose from one or more of the following types of auction designs for services or classes of services subject to competitive bidding ... sequential multiple round auctions (using either oral ascending or remote and/or on-site electronic bidding) ... "); *Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred From Government Use*, WT Docket No. 97-82, ET Docket No. 94-32 (rel. Dec. 31, 1997).

chains” that might arise.<sup>54/</sup> Because of the number of ITFS licenses that have already been issued, the instances of daisy-chains should be limited. Should, however, daisy-chains occur, WCA believes that they can be readily resolved through the sequential auction design.

Fortunately, the sequential auction method is adaptable for use when daisy-chains occur. WCA envisions the Commission conducting two or more auctions among the participants in the daisy-chain, all at the same session. The winner of the first auction would be eligible for processing to grant, and all applications mutually exclusive with the winner’s would be dismissed. Any remaining singleton application would be declared eligible for processing to grant, and any remaining applicants in the daisy-chain would participate in a second auction, with the winner declared eligible for processing to grant and those applications mutually-exclusive with the winner’s being dismissed. The process would continue until no applications remain.

3. *The Commission Should Regulate The Filing of Applications Through The Use of Windows.*

Regardless of whether the Commission chooses to employ competitive bidding to select from among mutually-exclusive applicants for new ITFS facilities, WCA strongly urges the Commission to adopt its proposal to employ periodic filing windows to govern the submission of such applications.<sup>55/</sup>

In Comments recently submitted in response to the *Notice of Proposed Rulemaking* in

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<sup>54/</sup> See Notice, at ¶ 58.

<sup>55/</sup> See Notice, at ¶ 61.

MM Docket No. 97-217, WCA and over 115 other participants in the wireless cable industry (the “Flexible Use Petitioners”) urged the Commission to adopt a sweeping set of application processing reforms to reduce the current backlog of applications (more than one-half of the ITFS applications filed during the October 1995 window remain pending) and assure that similar delays in the processing of ITFS applications not occur in the future.<sup>56/</sup> The lynchpin to those reforms is the use of a rolling, one-day filing window system for modification applications and the adoption of rules that would eliminate any need for the Commission staff to review modification applications filed on the same day to determine possible mutual-exclusivity. In the interest of brevity, WCA will refrain from restating in detail the substantial public interest benefits that will be achieved by adoption of those proposals and instead refers the Commission to the Comments of the Flexible Use Petitions in MM Docket No. 92-217.<sup>57/</sup>

For present purposes, however, the Commission should recognize that because the rules proposed for the processing of modification applications are inappropriate for applications for new ITFS facilities (which must be reviewed by the staff to determine mutual exclusivity), the Flexible Use Petitioners proposed that the Commission employ separate filing windows for the

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<sup>56/</sup> See Comments of the Petitioners, MM Docket No. 97-217, at 15-55 (filed Jan. 8, 1998).

<sup>57/</sup> It should be noted that WCA and the other Flexible Use Petitioners anticipate that when an application is filed to employ already licensed channels in connection with the addition of a response station hub or booster station under the rules proposed in MM Docket No. 97-217, such application will be considered to be a modification application, not an application for a new station that could be subjected to auction.

submission of applications for new ITFS stations.<sup>58/</sup> The Flexible Use Petitioners contemplate that during such windows no modification applications could be filed (thereby eliminating the potential that an application for a new station will be mutually-exclusive with a modification application).<sup>59/</sup> The success of the system proposed by the Flexible Use Petitioners thus depends upon segregating modification applications from applications for new ITFS stations.

Moreover, WCA notes that separating the application processes for modification applications from that for applications for new stations would avoid the knotty issue of whether modification applications can trigger an auction. The 1993 Budget Act permitted auctions “for any initial license or construction permit.” As the Commission noted in the *Competitive Bidding Second Report and Order*, the legislative history of the 1993 Budget Act makes clear that auctions are not to be used in cases of a modification of a license.<sup>60/</sup> The *Notice* recognizes that this operative statutory language was not changed by the Balanced Budget Act.<sup>61/</sup> Thus, the use of periodic windows for the filing of applications for new ITFS stations would not only promote the adoption of rules allowing expedited processing of modification applications, but would serve the Congressional objective of avoiding the use of auctions where mutually-exclusive modification applications are at issue.

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<sup>58/</sup> See *id.*, at 55

<sup>59/</sup> See *id.*

<sup>60/</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2355 citing H. R. Rep. No. 103-111 at 253.

<sup>61/</sup> See *Notice*, at ¶ 47.

4. *If Competitive Bidding Is Employed To Select From Among Mutually-Exclusive Applicants For New ITFS Stations, Bidding Credits Should Be Employed to Preserve The Educational Objectives Served Under the Existing Comparative Selection Point System.*

As has been noted throughout these comments, in the event that auctions are employed the Commission must take pains to ensure that the educational foundation of ITFS is not undermined. The current comparative point system has been designed to advance the Commission's objectives for the ITFS and, in the event that point system is replaced with competitive bidding, the Commission should employ bidding credits to serve the objectives advanced by the point system.

As is discussed in more detail above in Section II.B, the Commission currently employs a point system that was carefully designed "to grant licenses to those applicants that are most likely to best meet the educational and instructional needs of the various communities."<sup>62/</sup> The Commission has identified five relevant factors to consider in determining the most appropriate licensee, and "[t]he specific weight assessed to each characteristic [represents] the relative significance deemed, in the Commission's best judgment, appropriate to those factors."<sup>63/</sup> WCA submits that, just as the point system generally resulted in the selection of the applicant most likely to achieve the Commission's educational objectives, those objectives will best be served by affording applicants a 5% bidding credit for each point that an applicant would be entitled to under the current system.

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<sup>62/</sup> *ITFS Point System Order*, 101 F.C.C.2d at 69.

<sup>63/</sup> *Id.*

The Commission has recognized that bidding credits are an effective tool in promoting participation in auctions by certain classes of applicants which are entitled to preferences under the 1934 Act.<sup>64/</sup> In its recent report to Congress on spectrum auctions, for example, the Commission cited the use of bidding credits as a success in promoting the objective of enabling small businesses to participate in the Wireless Communications Service auction.<sup>65/</sup> WCA believes that such bidding preferences would be appropriate should the Commission opt for the use of auctions for ITFS applications.

Specifically, under WCA's proposal, an applicant would receive a 20% credit for being local, 15% for being an accredited school or a governing body of an accredited school, 10% for remaining in compliance with the four channel rule, 5% for proposing a weekly programming schedule that would result in one point or 10% for proposing a schedule that would result in two points under the existing system, and 5% for an E or F group licensee relocating a grandfathered station. In this way, the factors that the Commission has identified as the most relevant to determining the applicant most likely to provide the best educational service and their relative

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<sup>64/</sup> See *The FCC Report To Congress On Spectrum Auctions*, WT Docket No. 97-150, 27 - 29 (rel Oct. 9, 1997).

<sup>65/</sup> See *Amendment of Parts 1, 21, and 25 of the Commission's Rules To Redesignate The 27.5 - 29.5 GHz Frequency Band, To Reallocate the 29.5 - 30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services; Petitions for Reconsideration of the Commission's Competitive Bidding Rules*, CC Docket No. 92-297, FCC 97-323, ¶ 19 (rel. Sept. 12, 1997).

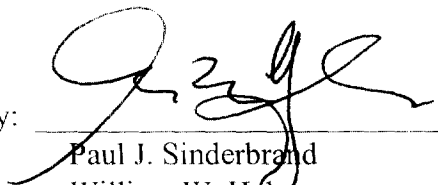
significance will continue to play a role in the ITFS licensee selection process.<sup>66/</sup>

### III. CONCLUSION.

WHEREFORE WCA respectfully submits that the Commission should not employ competitive bidding for mutually exclusive ITFS applications or, if it believes that auctions are required, conduct them employing the procedures proposed above.

Respectfully submitted,

WIRELESS CABLE ASSOCIATION  
INTERNATIONAL, INC.

By:   
Paul J. Sinderbrand  
William W. Huber

Wilkinson, Barker, Knauer & Quinn, LLP  
2300 N Street, N.W.  
Washington, D.C. 20037-1128  
(202) 783-4141

Its Attorneys

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<sup>66/</sup> Of course, as is discussed above in Section II.C, the use of bidding credits will not necessarily yield the same results as the current point system. For example, under the current point system approach, a local accredited school seeking its initial ITFS authorization will always prevail over a national ITFS filer with only a limited local nexus. Even with the bidding credits proposed by WCA, however, a mutually-exclusive national ITFS applicant can prevail over a local accredited school.